

Assembly Bill No. 404

Passed the Assembly May 21, 2009

Chief Clerk of the Assembly

Passed the Senate August 24, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 19565 and 23701d of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 404, Eng. Income taxes: exemption: charitable organizations: administration.

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law allows organizations that have obtained a ruling or determination from the Internal Revenue Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code to obtain exemption from state income taxes by submitting to the Franchise Tax Board a copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status, as specified.

This bill would additionally, if the central organization and all of its subordinates are organizations described in Section 501(c)(3), exempt a subordinate organization that is included in a federal group exemption letter, provided the organization submits to the board a copy of the group exemption letter issued by the Internal Revenue Service and substantiation that it is included in the federal group exemption letter as a subordinate organization. This bill would require the board to issue an acknowledgment of an organization's exemption from state income taxes, as provided. This bill would also, if the board suspends or revokes the exemption of an organization, provide that the exempt status will not be reinstated until the organization applies to the Franchise Tax Board for exemption, and the board issues a determination exempting the organization from state income taxes, as provided.

This bill would also require documents submitted to the Franchise Tax Board to verify the exemption, and the acknowledgment letter or other document issued by the Franchise Tax Board, to be open to public inspection, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 19565 of the Revenue and Taxation Code is amended to read:

19565. (a) (1) If an organization is exempt from taxation under Section 23701 for any taxable year, the application filed by the organization with respect to which the Franchise Tax Board made its determination that the organization was entitled to exemption under Section 23701, together with any papers submitted in support of the application, and any letter or other document issued by the Franchise Tax Board, with respect to the application, shall be open to public inspection. After the application of any organization has been opened to public inspection under this subdivision, the Franchise Tax Board shall, on the request of any person with respect to the organization, furnish a statement indicating the section which it has been determined describes the organization.

(2) If an organization is exempt from taxation for any taxable year pursuant to subdivision (c) of Section 23701d, any documents submitted to the Franchise Tax Board to verify the organization's federal exemption under Section 501(c)(3) of the Internal Revenue Code, including any copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code which is submitted by the organization to the Franchise Tax Board, and the acknowledgment letter or other document issued by the Franchise Tax Board, shall be open to public inspection.

(3) Any inspection under paragraph (1) or (2) of this subdivision may be made at times, and in the manner, as the Franchise Tax Board shall by regulation prescribe.

(b) Upon request of the organization submitting any supporting papers described in subdivision (a), the Franchise Tax Board shall withhold from public inspection any information contained therein which it determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if it determines that public disclosure of the information would adversely affect the organization. The Franchise Tax Board shall withhold from public inspection any information contained in supporting papers described in subdivision (a) the public disclosure of which it determines would adversely affect the national defense.

(c) The Franchise Tax Board may impose a reasonable charge for supplying any information the disclosure of which is permitted under this section.

SEC. 2. Section 23701d of the Revenue and Taxation Code is amended to read:

23701d. (a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization—

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, “qualified amateur sports organization” means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section 23701, an organization organized and operated for nonprofit purposes in accordance with this section shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731), upon its submission to the Franchise Tax Board of one of the following:

(A) A copy of the determination letter or ruling issued by the Internal Revenue Service recognizing the organization’s exemption from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(B) A copy of the group exemption letter issued by the Internal Revenue Service that states that both the central organization and all of its subordinates are tax-exempt under Section 501(c)(3) of the Internal Revenue Code and substantiation that the organization is included in the federal group exemption letter as a subordinate organization.

(2) Upon receipt of the documents required in subparagraph (A) or (B) of paragraph (1), the Franchise Tax Board shall issue an acknowledgment that the organization is exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731). The acknowledgment may refer to the organization’s recognition by the Internal Revenue Service of exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code and, if applicable, the organization’s subordinate organization status under a federal group exemption letter. The effective date of an

organization's exemption from state income tax pursuant to this subdivision shall be no later than the effective date of the organization's recognition of exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code, or its status as a subordinate organization under a federal group exemption letter, as applicable.

(3) If, for federal income tax purposes, an organization's exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code is suspended or revoked, the organization shall notify the Franchise Tax Board of the suspension or revocation, in the form and manner prescribed by the Franchise Tax Board. Upon notification, the board shall suspend or revoke, whichever is applicable, for state income tax purposes, the organization's exemption under paragraph (1) of this subdivision.

(4) This subdivision shall not be construed to prevent the Franchise Tax Board from revoking the exemption of an organization that is not organized or operated in accordance with this chapter or Section 501(c)(3) of the Internal Revenue Code.

(5) If the Franchise Tax Board suspends or revokes the exemption of an organization pursuant to paragraph (3) or (4), the exemption shall be reinstated only upon compliance with Section 23701, regardless of whether the organization can establish exemption under paragraph (1).

(d) The Franchise Tax Board may prescribe rules and regulations to implement this section.

Approved _____, 2009

Governor